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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

Y.G., a minor child, by and through his Next  
Friend, STEVEN J. RUSSELL,

Plaintiff,

v.

THE STATE OF OREGON, by and through  
its DEPARTMENT OF HUMAN SERVICES;  
MARK WALSH, an individual; KATE GUY,  
an individual; STACEY DAESCHNER, an  
individual; DOES I, II and III, as individuals;  
and, FARIBORZ PAKSERESHT, in his  
official capacity as the Director of DHS,

Defendants.

Case No. 3:19-cv-01870-AC

ANSWER AND AFFIRMATIVE DEFENSES

Defendants DHS, Daeschner and Pakseresht (hereinafter the “DHS defendants”) respond  
to plaintiff’s Complaint as follows:

1.

In response to Paragraph 1, the DHS defendants admit the court has jurisdiction over the federal claims, supplemental jurisdiction over the state law claims and that venue is proper.

2.

The DHS defendants admit that YG was 15 years of age at the time of the filing of the Complaint but deny the remaining allegations of Paragraph 2.

3.

The DHS defendants admit DHS is an agency of the State of Oregon but deny the remaining allegations of Paragraph 3.

4.

The DHS defendants admit that Russell lives in Polk County, and that Russell and his spouse are former foster parents but deny the remaining allegations of Paragraph 4.

5.

The DHS defendants admit that Pakseresht is the Director of DHS, admit that at material times Walsh, Guy and Daeschner were Child Welfare employees in Polk County, and admit that at material times Daeschner was acting within the course and scope of her employment, but deny the remaining allegations of Paragraphs 5 and 6.

6.

The DHS defendants admit that the agency knew YG's background but deny the characterization of the agency's knowledge and any other allegations of Paragraph 7.

7.

The DHS defendants admit that DHS and the individual defendants owe certain duties to children in the agency's care as prescribed by law but deny the selective characterization of those duties and any other allegations of Paragraphs 8, 9, 10, 11, 12 and 13.

8.

The DHS defendants deny the allegations of Paragraphs 14, 15, 16, 17, 18, 19 and 20.

9.

The DHS defendants admit that the state had a contract with Red Rock's parent corporation but deny the remaining allegations of Paragraph 21.

10.

The DHS defendants deny the allegations of Paragraphs 22 and 23.

11.

The DHS defendants admit there was an investigation of Red Rock but deny the characterization of the investigation and any other allegations of Paragraph 24.

12.

The DHS defendants deny the allegations of Paragraph 25.

13.

The DHS defendants admit that YG moved to Roseburg for a time but deny the other allegations of Paragraph 26.

14.

The DHS defendants deny the allegations of Paragraphs 27, 28 and 29.

15.

The DHS defendants cannot respond to allegations against other defendants, and on that basis deny the allegations of Paragraphs 30 through 49.

16.

The DHS defendants respond to Paragraph 50 as described above.

17.

The DHS defendants deny the allegations of Paragraph 51.

18.

The DHS defendants respond to the allegations of Paragraph 52 as described above.

19.

The DHS defendants deny the allegations of Paragraphs 53 through 56.

20.

The DHS defendants respond to the allegations of Paragraph 57 as described above.

21.

The DHS defendants deny the allegations of Paragraphs 58, 59 and 60.

22.

The DHS defendants respond to Paragraph 61 as described above.

23.

The DHS defendants deny the allegations of Paragraphs 62, 63 and 64.

24.

The DHS defendants respond to Paragraph 65 as described above.

25.

The DHS defendants deny the allegations of Paragraphs 66 and 67.

26.

Except as expressly admitted above, the DHS defendants deny each and every allegation of plaintiff's Complaint, and the whole thereof.

### **Affirmative Defenses**

#### **First Affirmative Defense**

27.

The state has not waived sovereign immunity for the vulnerable person statute claim.

**Second Affirmative Defense**

28.

Plaintiff failed to serve an adequate tort claim notice.

**Third Affirmative Defense**

29.

Defendant Daeschner is entitled to qualified immunity.

**Fourth Affirmative Defense**

30.

Plaintiff's injunctive relief claim fails because there is an adequate remedy at law.

WHEREFORE, having fully answered plaintiff's Complaint, the DHS defendants pray for dismissal and for judgment in favor of the DHS defendants for their costs and disbursement incurred herein.

DATED March 20, 2020.

Respectfully submitted,

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